

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Michael Lee Montgomery, II,)	
)	
Petitioner,)	No.: 2:15-cv-2264-RMG
)	
vs.)	
)	ORDER
State of South Carolina,)	
)	
Respondent.)	
)	

This matter comes before the Court on the Report and Recommendation (R & R) of the Magistrate Judge (Dkt. No. 17), recommending that the Court grant Respondent's motion for summary judgment, deny Petitioner's motion for a hearing, and dismiss the Petitioner's habeas petition. For the reasons stated below, the Court **ADOPTS** the R & R as the order of the Court.

In October 2010, Petitioner was convicted of (1) growing/manufacturing marijuana and (2) possession with intent to distribute marijuana. (Dkt. No. 11-2 at 168-69). He was sentenced to 54 months on the first count and thirty days on the second count, to run concurrently with the first. (Dkt. No. 11-2 at 176). Petitioner subsequently appealed his conviction and pursued state post-conviction relief; those attempts were unsuccessful. (*See* Dkt. Nos. 11-5, 11-6, 11-8, 11-9, 11-10). And on June 4, 2015, Montgomery filed this *pro se* petition for writ of habeas corpus. (Dkt. No. 1).

The Magistrate Judge recommended granting Respondent's motion for summary judgment because Petitioner was not in custody at the time he filed the petition for habeas corpus. In addition, Petitioner is not currently in custody or on probation. (*See also* Dkt. No. 11-2 at 194 ("He has completed that sentence and is no longer in the department of corrections."));

206 (“At the time of [the PCR] hearing, Applicant was no longer incarcerated.”)). Petitioner has failed to present any evidence to the contrary.

Having fully consider the R & R, the record, and the relevant legal standards, the Court finds that the Magistrate Judge ably and accurately set forth the legal and factual issues in this matter and correctly concluded that the Respondent’s summary judgment motion should be granted. Therefore, the Court **ADOPTS** the R & R (Dkt. No. 21), **GRANTS** Respondent’s Motion for Summary Judgment (Dkt. No. 12), **DENIES** Petitioner’s motion for a hearing (Dkt. No. 17), and **DISMISSES** the habeas petition.

Certificate of Appealability

The governing law provides that:

(c)(2) A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability . . . shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c). A prisoner satisfies the standard by demonstrating that reasonable jurists would find this Court’s assessment of his constitutional claims debatable or wrong and that any dispositive procedural ruling by the district court is likewise debatable. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683 (4th Cir. 2001). In this case, the legal standard for the issuance of a certificate of appealability has not been met. Therefore, a certificate of appealability is **DENIED**.

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

January 27, 2016
Charleston, South Carolina